

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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GERALD CORNELIUS ELDRIDGE,	*	CIVIL ACTION 05-1847
Petitioner	*	
	*	
Versus	*	Houston, Texas
	*	
RICK THALER, Director,	*	
Texas Department of	*	
Criminal Justice,	*	9:00 a.m.
Correctional Institutions	*	
Division,	*	
Respondent	*	November 24, 2009

* * * * *

SCHEDULING CONFERENCE

BEFORE THE HONORABLE LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

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General Order 94-15, United States
District Court, Southern District of Texas**

Proceedings recorded by computer stenography
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1 THE COURT: Eldridge, everybody ready?

2 MR. WILSON: Yes, Your Honor. Lee Wilson for
3 Mr. Eldridge.

4 MR. JONES: And Greg Jones.

5 MR. WIERCIOCH: Your Honor, this is Greg
6 Wiercioch from San Francisco, California for the
7 Petitioner.

8 MR. NICHOLS: Good morning, Your Honor. Eric
9 Nichols and Georgette Oden for the State.

10 THE COURT: All right, thank you very much.

11 This is a Scheduling Conference. Stay was
12 for 90 days. The expert, I gather, has already been
13 retained; correct?

14 MR. WILSON: I believe not, not as of today,
15 Your Honor. That's my understanding. Mr. Wiercioch had
16 some contact with Dr. Roman.

17 Can you hear me, Mr. Wiercioch?

18 MR. WIERCIOCH: Yes.

19 Yes, I've contacted Dr. Roman, Your Honor,
20 and told him about the stay and gave him a copy of this
21 Court's order. I've not yet heard back from him.

22 THE COURT: All right, let's work backwards
23 from the 90 days and figure out when it will be
24 reasonable to expect the next motions to be filed, and
25 if an evidentiary hearing is required, when that should

1 be scheduled for?

2 MR. WILSON: Your Honor, we would like to
3 address the Court. We feel we need more than 90 days
4 to finish our work.

5 THE COURT: How long will the expert need to
6 finish the examination and provide the report?

7 MR. WILSON: I think Mr. Wiercioch would be
8 best to answer that question, Your Honor.

9 THE COURT: Mr. Wiercioch?

10 MR. WIERCIOCH: Yes, Your Honor. What I wanted
11 to set out is the fact that we have not yet had a
12 meaningful opportunity to develop the facts of our **Ford**
13 claim. As this Court said in its order from last week,
14 the State Court violated the procedural due process by
15 not giving us the opportunity to have our own expert who
16 could rebut or challenge the State expert's findings.
17 So there is no deference here. We're working from a
18 blank state. This Court's going to be applying de novo
19 review. And we have yet to file our Amended Petition,
20 which would include that **Ford** claim. So this is a
21 situation where, because we haven't had adequate fact
22 finding procedures -- not only appointed counsel, but
23 funding for experts and possibly investigative
24 assistance, as well -- that again we're working from a
25 blank slate, but we were not able to file our **Ford**

1 petition.

2 THE COURT: I don't mean to cut you off,
3 Mr. Wiercioch, and I'm sorry you're not here. For a
4 matter of this import, it would be helpful to have
5 everyone present, but I understand you're in San
6 Francisco.

7 To say that this is a blank slate is true
8 in part, but not completely true. There is an enormous
9 record in this case. There was a vigorously and
10 thoroughly litigated *Atkins* claim. Much of the
11 information that was presented in connection with that
12 claim is going to apply and be relevant to the **Ford**
13 claim. So there has been an opportunity that was taken
14 advantage of earlier in this litigation to obtain a
15 large amount of relevant information as to
16 Mr. Eldridge's background, both in school, in work and
17 in social and family settings. So much of that
18 information is in the record.

19 You do now have funds to retain the
20 expert, and my question to you is: Given -- and I
21 understand that the expert will also need time to look
22 through this information. But if you could just give me
23 a more specific idea of when you will have a report and
24 what kind of briefing -- motion and briefing schedule
25 would be appropriate to put into place, or if we should

1 schedule an evidentiary hearing and present and put into
2 place a briefing schedule that would be anchored by that
3 date, which may make the most sense, we can go from
4 there.

5 MR. WIERCIOCH: Well, Your Honor, what I would
6 propose -- what we would propose is 180 days to allow us
7 to file the **Ford** petition.

8 Now, the reason I say that -- and I don't
9 disagree that there is an enormous amount of information
10 here that's already been generated. However, the
11 Supreme Court, in remanding the **Scott Panetti** case, said
12 that expert evidence was absolutely essential, and it
13 discussed -- it cited to the amicus brief from the
14 American Psychiatric Association setting out the ways in
15 which experts could inform the Court on the competency
16 determination. And one of the things that that amicus
17 brief says that the Supreme Court cited is that the
18 experts must use multiple sources of information in
19 making their determinations, because that enhances the
20 accuracy of the determination.

21 So, although the Court may be familiar
22 with a lot of the documentation in Mr. Eldridge's case,
23 our expert is not, and that documentation now totals
24 several thousand pages. I'm not saying the expert has
25 to look at every one of those pages, but that

1 information is one of those multiple sources of
2 information.

3 The other source of information is what
4 are called collateral contacts, witnesses who may have
5 some idea about Mr. Eldridge's behavior: Family
6 members, friends, guards, inmates, treatment staff.
7 Those people have to be identified, those people have to
8 be interviewed, and the results of those interviews
9 reviewed by the expert as well.

10 And then finally, of course, there is the
11 evaluation itself by the expert. And again, the APA
12 brief talks about how it is important for the expert to
13 have multiple visits with the inmate in order to enhance
14 the accuracy of the determination.

15 I would direct the Court's attention to a
16 very similar case out of the Western District of Texas
17 from last year. This is the **Jeffrey Wood vs. Quarterman**
18 case. That can be found at 572 F.Supp 2d, 814. Almost
19 identical.

20 There was no fact development procedures
21 allowed in state court. The Federal District Court
22 stayed the execution, allowed for the appointment of
23 counsel and funding for an expert. Initially, the Court
24 gave around 70 days to file the **Ford** petition. That
25 ended up being 215 days with continuances granted in

1 order for investigative and expert assistance to
2 continue. And the Court then also set out 60 days for
3 the State to respond to the petition, another 30 days
4 for the reply, and then one to two months after all of
5 those pleadings were filed to tentatively set an
6 evidentiary hearing.

7 So that's what we would propose here, Your
8 Honor.

9 THE COURT: Let me hear from the Government,
10 please.

11 MR. NICHOLS: Good morning, Your Honor. Eric
12 Nichols.

13 We believe that under these circumstances,
14 in this kind of a claim, the Court has recognized it can
15 go forward. It is appropriate to set an evidentiary
16 hearing. So we think the Court is going down the right
17 track to go ahead and find a good date for an
18 evidentiary hearing, work backwards. The question of
19 how quickly you can work it up is how hard people want
20 to work to work it up.

21 So I think that our advice would be to
22 obviously give the petitioner an opportunity to develop
23 expert testimony. But I think in situations where
24 Court's set deadlines, experts kind of adjust their
25 schedules accordingly. And so I don't know if 90 days

1 is exactly the right amount of time, but I think that
2 there should be a schedule, and I think the Court should
3 set a firm date for an evidentiary hearing, work
4 backwards, set some deadlines.

5 I helped to try the **Scott Panetti** case on
6 remand before Judge Sparks. What we did in that case
7 was, we had a discovery schedule set, we had provisions
8 for expert disclosures, we had provisions for expert
9 depositions, which, as the Court knows from other civil
10 cases, really moved the hearing along. And as a result
11 of setting that schedule that Judge Sparks set, we were
12 able to try that case, I think, in -- I think it was
13 maybe three days. We presented the expert's life to the
14 Court and we presented a lot of the record material, you
15 know, the medical records, other materials relating to
16 the issues to the Court to review in camera at its
17 leisure.

18 So State advocates for a scheduling order
19 that contains those hard dates and let's work it up.

20 MR. WIERCIOCH: Your Honor, if I could respond
21 to that in part.

22 In the **Scott Panetti** case, I believe
23 Mr. Nichols is referring to the second evidentiary
24 hearing, which took place in 2008. This was right after
25 the remand from the Supreme Court and this was late

1 August of 2007. The Court at that time, at that status
2 conference, set the hearing for roughly 150 days out.
3 So it took place in February of 2008.

4 Keep in mind, though, in that case this
5 was the second hearing. The Court had already had a
6 hearing a few years earlier and the petition had already
7 been filed a few years earlier. So, even under those
8 circumstances, 150 days was set before the hearing.
9 We're in a much different situation here where we
10 haven't even developed the facts of this claim yet.

11 THE COURT: Well, again, I'm not sure that
12 anything Mr. Nichols said is that inconsistent with the
13 position that you are taking, number one.

14 Number two, I've looked at the case that
15 you cited and I don't see any indication -- and I could
16 be wrong because I've just looked at it very quickly --
17 that in that case there had been a previously heavily
18 litigated **Atkins** claim prior to the raising and
19 litigation of the **Ford** claim.

20 So we are in a somewhat different posture
21 because much of the work that you identified, not all
22 of it -- I'm not suggesting that. But much of the work
23 that you identified as being particularly
24 time-consuming -- identifying family members, friends
25 who knew the petitioner at various stages of his life

1 and who could provide important information about him
2 in those different stages of his life -- have been
3 identified, have been examined on the record, and
4 records that are importance to fleshing out the claim
5 have been gathered. So much of that time has already
6 been spent and the product of it is available.

7 So that weighs in favor of a somewhat
8 shorter period than you have indicated would be
9 necessary.

10 And I gather that no party is asserting
11 any kind of statutory limit on the amount of time we can
12 put into place at this point; is that correct?

13 MR. NICHOLS: That's correct, Your Honor.

14 THE COURT: All right.

15 MR. WIERCIOCH: Your Honor, the only thing I
16 would say is, you know, an argument could be made that
17 we should file the petition within a year from the
18 setting of the execution date, which was August 5th of
19 this year, because that is kind of the factual predicate
20 that puts the **Ford** claim on the map in terms of making
21 it ripe.

22 THE COURT: Sure. So the Amended Petition
23 putting forward the **Panetti/Ford** claim, with as an
24 attachment a report prepared by your expert setting out
25 his findings and conclusions about Mr. Eldridge's

1 competence to be executed, that ought to be our first
2 date. And if we were to -- you have asked to have that
3 date set for sometime at the end of February, is that
4 correct, or at the end of March?

5 MR. WIERCIOCH: I was suggesting initially 180
6 days, which I think would be mid-May.

7 THE COURT: I don't think we need anywhere near
8 that amount of time. For the Amended Petition and the
9 report, I would think that the -- well, let me hear what
10 the State would view as reasonable before I --

11 MR. NICHOLS: Your Honor, I thought we were
12 talking about 180 days initially for the entirety of the
13 process, and now it sounds like we're talking about 180
14 days just to get the Amended Petition.

15 THE COURT: That's what the Petitioner is
16 asking for.

17 MR. NICHOLS: That is excessive in the State's
18 view. But if the Court's -- if the Court wants them to
19 get their expert to do his analysis and have that filed
20 with the --

21 THE COURT: Amended Complaint?

22 MR. NICHOLS: -- Amended Complaint, then -- I
23 mean, I'm hard pressed to understand why that couldn't
24 be done within the next 60 days, even considering the
25 holidays and everything else.

1 THE COURT: So you are arguing for the end of
2 January, basically?

3 MR. NICHOLS: Yes, Your Honor.

4 THE COURT: Well, the obvious solution would be
5 somewhere inbetween those two dates, and I don't mean
6 that to be a facetious suggestion. I do think that much
7 less time than the Petitioner has suggested, for the
8 reasons I've outlined, is necessary, and I would think
9 that the beginning of March should be ample, which would
10 take us -- so, if we set March 5th, 2010 as the date for
11 the Amended Petition, along with the report by the
12 expert, how long do you need to answer? Is 30 days
13 enough?

14 MR. NICHOLS: 30 days, Your Honor.

15 THE COURT: That would take us to -- let's set
16 it for April 5.

17 Respondent will file an Amended Answer.

18 And how long -- do you want a reply
19 opportunity for that?

20 MR. WIERCIOCH: Yes, Your Honor.

21 THE COURT: I would think that May 3rd would
22 give you ample opportunity.

23 And then at what point should we look to
24 be taking expert depositions?

25 MR. NICHOLS: Your Honor, from the State's

1 perspective, we can be doing that during this process.

2 THE COURT: I agree with that.

3 MR. NICHOLS: So there is no reason to set
4 another deadline. I think the next deadline maybe the
5 Court should look at would be a date for the hearing.

6 MR. WIERCIOCH: I'm sorry, I didn't hear that,
7 Your Honor.

8 THE COURT: We're looking at a date for the
9 hearing. Probably, I would suggest looking at April and
10 early May. I don't want to go any later than that.

11 MR. WILSON: I'm sorry, Your Honor?

12 THE COURT: April or early May.

13 MR. WILSON: For --

14 THE COURT: Hearing -- evidentiary hearing.

15 Are there any limits on counsel's
16 availability?

17 MR. WILSON: Not on my part, Your Honor. I
18 would ask the Court to set a deadline for **Daubert**
19 objections before the hearing, Your Honor.

20 THE COURT: All right.

21 MR. WIERCIOCH: Your Honor, I just caught part
22 of the State's suggesting that the depositions of
23 experts should take place -- and I didn't hear when.

24 THE COURT: Basically to begin right after you
25 finish -- right after the deadline for filing the

1 Amended Complaint with the expert's report, which would
2 put the depositions basically in March and April, mostly
3 March.

4 I'd like to set **Daubert** filing. We could
5 set the **Daubert** challenge date for the same date as the
6 respondent's answer, April 5th. **Daubert** challenges.

7 Response to those can be in the normal
8 course, which would basically make them due April 26th.

9 And we would be looking at an evidentiary
10 hearing, I would think, the week of -- how about May 12,
11 13 and 14? That ought to be plenty of time.

12 MR. WIERCIOCH: Yes. My only concern about
13 the depositions is that, obviously, we will be at a
14 disadvantage with the State having our expert report
15 and/or Amended Petition. However, we won't get the
16 State's response or report until April 5th, so we would
17 not be able to take the depositions with the same
18 information that the State would have in taking our
19 expert's deposition?

20 MR. NICHOLS: Your Honor, if I may be heard.
21 We'll make sure they have the opportunity to get the
22 expert's materials and depose the expert prior to the
23 schedule date.

24 THE COURT: All right. So you'll have your
25 report after the March 5th deadline. You'll file your

1 expert report what, two weeks later?

2 MR. NICHOLS: I think we could do that. We
3 need to check with the experts, but if there is some
4 problem there, but certainly we could do it by the time
5 the answer is filed on April 5th.

6 THE COURT: Right.

7 MR. NICHOLS: And then also provide the
8 materials that underlie the expert's work, which we'll
9 obviously ask for on the other side, as well, and get
10 that out immediately. And that will still give us over
11 a month to get that deposition done before the hearing.

12 THE COURT: Well, then the **Daubert** challenge
13 deadline needs to be moved because that doesn't work. I
14 agree with that.

15 MR. NICHOLS: And, Your Honor, I don't
16 foresee -- I mean, from my experience with the **Panetti**
17 case, I don't see foresee challenges to an expert's
18 qualifications. It's going to boil down to the issues
19 of whether the Court feels like the expert testimony is
20 helpful to make the Court's ultimate decision, and
21 that's something that you're going to have to mold into
22 your ultimate decision anyways.

23 THE COURT: Right. Basically, I think the
24 resolution of the **Daubert** challenges will be part and
25 parcel of -- any **Daubert** challenges will basically be

1 arguments about the reliability and helpfulness of the
2 expert evidence, which will be part and parcel of the
3 analysis of the claims and defenses.

4 But we would then move the **Daubert**
5 challenges.

6 Can we get the **Daubert** challenges, then,
7 filed by April 23rd?

8 MR. WILSON: I think that would work. I would
9 ask Mr. Wiercioch if he thinks that's reasonable.

10 MR. WIERCIOCH: Yes, that sounds reasonable to
11 me, Your Honor.

12 THE COURT: All right.

13 MR. WIERCIOCH: Your Honor, just again to back
14 up for one second, one of the problems we ran into in
15 the **Scott Panetti** second hearing is that the judge
16 allowed for depositions of experts. However, whoever
17 called the deposition had to pay for the State's -- I'm
18 sorry, for the expert's time. We were not able to do
19 that because we were not allowed funds. So we did not
20 take any depositions of the State's experts. The State
21 took depositions of all of our experts.

22 THE COURT: If what you are asking is whether
23 it would be appropriate to have additional funds allowed
24 to permit you to pay your expert -- or permit you to pay
25 the expert so you can depose that expert; is that what

1 you are asking?

2 MR. WIERCIOCH: The judge put that burden on
3 whoever was calling for the deposition and put that
4 burden on the State when they called our experts. I
5 don't believe the State ever paid our experts in that
6 case. Because our client was indigent, we were unable
7 to even take depositions. So any preparation time or
8 time that the expert spent traveling to the deposition
9 and actually taking the deposition, we were never
10 compensated for that. It just created a lot of problems
11 that I want to try and nip in the bud in this situation.

12 MR. NICHOLS: Your Honor, if I may be heard, I
13 think the issue there was that it was the Petitioner's
14 request that that be the case in the **Panetti** case. So I
15 think what Mr. Wiercioch is referring to is the problem
16 of the Petitioner's own making in that case.

17 I would suggest that we just do this where
18 folks are going to bear the cost of their expert no
19 matter what they are doing, whether they're giving a
20 deposition, whether they are here testifying before the
21 Court. And that way, it will make it much cleaner. If
22 they need additional funds to fund their expert, then
23 they can approach the Court with an application on that.

24 THE COURT: Which, as I understand, is the
25 usual way it operates.

1 MR. NICHOLS: Right. And it was changed in
2 **Scott Panetti** case because of the Petitioner's request
3 to do that.

4 THE COURT: All right. I don't have a problem
5 with that approach. Is that acceptable to everyone?

6 MR. WILSON: Yes, Your Honor.

7 THE COURT: All right. We've got, I think, a
8 workable schedule.

9 MR. WILSON: I have one suggested --

10 THE COURT: I do want to set a date for the end
11 of the week of May 7 for filing exhibit lists, witness
12 lists.

13 Do we need anything else filed besides
14 those two categories of information?

15 MR. WILSON: Your Honor, I was just going to
16 ask the Court if the Court would want post-hearing
17 briefs like we did on the mental retardation claim. I
18 don't know that the Court would think that's necessary.

19 THE COURT: I probably don't know the answer to
20 that until we have the hearing. Or I would be surprised
21 if the parties didn't file pre-hearing briefs. But
22 frankly, it would probably be more useful to me to
23 have -- well, this case may be a little bit different
24 because so much of the information is already out there.
25 I don't know if a post-hearing brief will be necessary.

1 MR. WILSON: Your Honor, when the time comes
2 for the hearing, I suppose I will be filing a motion,
3 because we are appointed, so that a daily transcript may
4 be prepared in case the Court does want a post-hearing
5 brief, and we don't have to wait an additional 30 days
6 or 20 days for the court reporter to finish that. I
7 suppose we will cross that bridge when the time comes.

8 THE COURT: We will.

9 MR. NICHOLS: The only thing I was going to
10 add, Judge, is that what makes this case a little bit
11 unique, too, is that I'm sure the Court has already
12 started to grapple with the applicable standard for
13 rational understanding. And it's an issue that we
14 litigated in the **Panetti** case on remand from the
15 Supreme Court. The Supreme Court articulated a rational
16 understanding standard, but failed to really provide any
17 meaningful guidance to any court in applying that
18 standard.

19 The State took the position before Judge
20 Sparks that, necessarily, especially if we're going to
21 rely on the type of expert analysis that Petitioner is
22 seeking to rely on in this case, that we need to adopt a
23 standard that more closely conforms to language in the
24 **Panetti** Supreme Court opinion about an individual's
25 capacity to understand.

1 Petitioners in other cases -- I assume
2 they are going to take the same position in this case --
3 try to gravitate towards a standard of actual
4 understanding, that is what the individual inmate
5 actually understands or doesn't understand.

6 So the only reason I raise that now is
7 that that is an issue that I have confidence the Court's
8 going to look at on its own. I don't know if you need
9 briefing from the parties on that issue. But that was
10 the only thing that I thought, if you did want some
11 briefing, it might have be helpful to do that before the
12 hearing rather than after.

13 THE COURT: What I will try to do is, 30 days
14 before the hearing, let you know if I do think that
15 briefs are going to be helpful and, if so, what legal
16 issues I'd like them to focus on; not to limit you to
17 those issues, but to give you some guidance on what
18 would be appropriate or most helpful to me.

19 Are you aware, Mr. Nichols, of any cases
20 that are currently in the pipeline to go up to the Court
21 that clarify this?

22 MR. NICHOLS: Well, we hope to get the **Panetti**
23 case up, but for whatever reason that case has been
24 stalled at the Fifth Circuit. We felt like the **Panetti**
25 case, since it had already been addressed by the Supreme

1 Court, would be a good case to go back up before the
2 Circuit. It hasn't happened for reasons that are not
3 attributable to the State by any means.

4 And then counsel referred to the *Wood*
5 case. It's still making its way along. I think, Your
6 Honor, you could look at the decision -- I'm sure the
7 Court will look at the decision that Judge Sparks
8 entered on remand. He had some discussion of the
9 relevant standard. The *Wood* case is still making its
10 way up.

11 And I think the bottom line is, Your
12 Honor, you may have the opportunity to write on a little
13 bit of a blank slate in terms of making your own
14 judgment as to what the appropriate legal standard is.

15 As we all know, when the Supreme Court
16 does what it does, which is send a case back without any
17 real guidance, we're going to be in a situation where
18 eventually we're going to try to get some guidance from
19 the Fifth Circuit as to how this standard of rational
20 understanding is to be crafted and how it is to be
21 applied across the board in every case, which, of
22 course, is the State's interest is to make sure that at
23 the end of the day we do have a standard that is capable
24 of being implemented in cases, and also it's constructed
25 in a way that does allow a court to rely meaningfully on

1 expert testimony.

2 And so I think, again, this is kind of an
3 opportunity for this Court to weigh in on how this
4 standard of rational understanding is really going to be
5 applied in cases.

6 THE COURT: All right, thank you.

7 MR. JONES: Your Honor, maybe I missed
8 something or maybe presumed, but my understanding is
9 that the **Daubert** objections are due on the 23rd of
10 April?

11 THE COURT: That's right.

12 MR. JONES: And I missed -- is the assumption
13 that the responses are going to be 21 days after that,
14 14 days after that?

15 THE COURT: That's going to be not enough time
16 to get the responses in before the hearing. So I would
17 actually like the responses to be filed on a shorter
18 basis.

19 The real problem with this is that March 5
20 is probably about two weeks later than this schedule is
21 best served by if we want to have our hearing at that
22 point in May, and I very much want to keep those dates
23 because they are open, and I know that it's very hard to
24 schedule things once you get into the May and beyond
25 time frame.

1 So I'm actually looking at the schedule
2 and thinking what we ought to do is move the Amended
3 Complaint and expert report deadlines up to February
4 19th, which is only two weeks different, but that two
5 weeks will make the scheduling much easier. And then
6 have the response by -- March 19th is plenty of time, I
7 would think.

8 MR. WIERCIOCH: Your Honor, I'm a little
9 concerned about March 19th. I mean, for all intents
10 and purposes, you know, this holiday -- major holiday
11 season coming up right now is going to wipe out between
12 Thanksgiving and the end of the year a lot of the
13 ability of experts and investigators to just drop
14 everything and help us.

15 THE COURT: Wait, I'm sorry. I'm not aware
16 that there is a holiday that extends from November 26th
17 to January 2nd. I mean, there are lots of things that
18 people do during this time of the year, but that's a
19 little bit of an over-statement.

20 MR. WIERCIOCH: Your Honor, I'm just saying
21 losing those two weeks from March 5th to February 19th
22 is substantial.

23 THE COURT: All right. Well, how about if I
24 give you back one of those weeks? I take your point
25 that it is a busy time of year.

1 February 26th for the Amended Complaint
2 and expert reports. I think we can keep March 19,
3 though, for the response. That puts the State under
4 some pressure, but the State --

5 MR. NICHOLS: That's fine, Your Honor.

6 THE COURT: That's fine.

7 And then if we have the **Daubert**
8 challenges, we could then move the **Daubert** challenges up
9 to April 9, which gives an opportunity for a response to
10 be filed April 30 and the hearing set from May 12 to 14.
11 And on May 7, exhibit lists and witness lists.

12 I do think it might be helpful for us to
13 set one more date for kind of an interim status
14 conference, to be sure that the deadlines are still
15 working, that there is no need for adjustment, that
16 there is sufficient time for the work to be done
17 properly and thoroughly. And perhaps the best time to
18 look for that would be -- how about March 12, does that
19 work?

20 MR. WIERCIOCH: Yes, Your Honor.

21 THE COURT: I think that does work. All right,
22 March 12, at 9:00 a.m..

23 Anything else that we need to do today?

24 MR. WILSON: Your Honor, Mr. Wiercioch did
25 file a formal motion to be appointed as co-counsel.

1 THE COURT: I'll grant it, Mr. Wiercioch.

2 MR. WIERCIOCH: Your Honor, if I could say
3 something about that before you do so. My forte is not
4 in evidentiary hearings. I am hoping to continue to
5 help in preparation for the hearing and any briefing
6 that may be needed before, during and after.

7 My wife is expecting in April, early
8 April, and I'm hoping that at some point another
9 attorney from our office could be substituted in for me
10 to assist in the hearing itself.

11 Do you think that would be possible?

12 THE COURT: I don't know of any reason that it
13 would not be. You do have some very good lawyers with
14 fine skills for participating in evidentiary hearings in
15 the courtroom. So I'm not aware of any reason that
16 there wouldn't be a grant of a substitution motion. But
17 I think you are in good shape, anyway.

18 MR. WIERCIOCH: Okay, thank you, Your Honor.

19 THE COURT: And congratulations.

20 MR. WIERCIOCH: Thank you.

21 THE COURT: All right, anything else we need to
22 do now?

23 MR. WILSON: Not on behalf of Mr. Eldridge,
24 Your Honor.

25 THE COURT: I'll get a scheduling order out so

1 you will all have it.

2 MR. WILSON: Yes, sir, Your Honor. Thank you
3 for the Court's time.

4 THE COURT: Thank you very much.

5 MR. WIERCIOCH: Thank you.

6 ***[Proceedings adjourned]***

7 REPORTER'S CERTIFICATE

8
9 I certify that the foregoing is a correct transcript
10 from the record of proceedings in the above-entitled
11 cause.

12

13 /s/ Ed Reed
Edward L. Reed
14 Official Court Reporter

7-8-11
Date

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